

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 02-60314- CIV-MARTINEZ
MAGISTRATE JUDGE LYNCH

NIGHT BOX
FILED

JAN 10 2003

CLARENCE MADDOX
CLERK, USDC/SDFL/MIA

ACCESS FOR THE DISABLED, INC. and
ROBERT COHEN,

Plaintiffs,

vs.

BRINKER FLORIDA, INC., a foreign
corporation, and NICHOLAS CASSAS, an
individual,

Defendants. /

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

AFFIDAVIT OF GARY PHILLIPP

BEFORE ME, the undersigned authority, personally appeared GARY PHILLIPP,
who being by me first duly sworn, deposes and says that:

1. I am over the age of 18 years and make this affidavit of personal knowledge.
2. I am employed by Chili's and am the facilities manager for the Chili's Southeast Region. The Chili's Grill & Bar located at 1650 University Drive, Coral Springs, Florida (the "Property") is one restaurant within my job responsibilities.
3. Brinker Florida, Inc. ("Brinker") is the parent corporation which leases and operates the Chili's Grill & Bar at issue in this matter.

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4. In connection with my position as Facilities Manager, I reviewed and am familiar with the Complaint filed in this matter which alleges violations of the Americans with Disabilities Act (the "ADA") at the Property.

5. In addition, I attended the site inspection conducted by plaintiffs' counsel and expert, Thomas Ricci of Accessibility Disability Consultants, on October 30, 2002, at the Property. I thereafter received and reviewed Mr. Ricci's November 2, 2002 report delineating plaintiffs' ADA items at issue at the Property (the "Plaintiffs' Report"). (See my earlier affidavit, sworn to and subscribed on November 25, 2002, and filed contemporaneously with Brinker's Motion for Summary Judgment (the "Motion"), ¶¶ 5-7)

6. Mr. Ricci thereafter apparently conducted another inspection at the Property, following the filing of Brinker's Motion, and prepared another report dated December 12, 2002 ("Plaintiffs' December Report"). I received and reviewed a copy of Plaintiffs' December Report.

7. The one interior ADA modification that plaintiffs' allege has not been made at the Property is that the smoking section of the fixed seating area has not been repaired. (Plaintiffs' December Report, p. 5)

8. Brinker, however, has implemented a Florida statewide policy whereby each Chili's Grill & Bar is designated as a non-smoking restaurant. As such, the Property is, in its entirety, designated as non-smoking and there is no smoking section in the restaurant.

9. Since filing its Motion, Brinker has also implemented the written policies for the Property that address each item raised in Plaintiffs' Report, and Plaintiffs' December Report, with respect to staff handling of individuals with disabilities. (See

Plaintiffs' Report, p. 5; Plaintiffs' December Report, pp. 4-5) Those policies have been distributed to, and signed by, each employee at the restaurant. (A copy of those policies were annexed to my November Affidavit as Exhibit "C".)

10. Finally, since filing its Motion, Brinker has received the requisite permits from the City of Coral Springs Buildings Department to perform the exterior modifications plaintiffs seek. Brinker has contracted with Titus Construction, Inc. ("Titus") to perform all exterior modifications at issue and Titus is beginning that exterior work. (See my November Affidavit, ¶¶ 10-15) At this time, I anticipate that all of the exterior modifications will be completed within the week.

11. Accordingly, all of the ADA items alleged in the Complaint, Plaintiffs' Report, and Plaintiffs' December Report have been addressed at the Property.

FURTHER AFFIANT SAYETH NAUGHT

GARY PHILLIPP
GARY PHILLIPP

The foregoing instrument was acknowledged before me this 9TH day of January, 2003, by GARY PHILLIPP, who is personally known to me or has produced _____ as identification and whom did/did not take an oath.

NOTARY PUBLIC, State of Florida at Large

LYNNE EHRLICH
Type or Print Name

My commission expires:



Lynne Ehrlich
My Commission DD071389
Expires November 13, 2005

[Signature]

NOV 13, 2005